

CATHY D. MILLER)
 Claimant)
 VS.)
) Docket No. 1,026,423
MOON'S IGA)
 Respondent)
 AND)
)
HAWKEYE-SECURITY INSURANCE)
 Insurance Carrier)

This claim has come before Judge Foerschler twice on preliminary hearing. After the first preliminary hearing on January 19, 2006, the Judge entered a Preliminary Decision on January 26, 2006, which stated in part:

At a preliminary hearing on January 19, 2006, a primary issue appeared to be the work related causation of Claimant's current knee complaints. She says a "pop" in the right was noticed on October 15, 2005 as she was beginning her work there cooking in the deli department. . . .

She has a history of knee problems and other than her description of the new alleged accident, no way to distinguish this occurrence from her prior history.

So no relief can be granted at this time. If the parties can agree on a competent knee specialist to serve as a neutral physician as K.S.A. 44-516 provides, an order will be provided for that provider to advise us as needed.

The parties appeared before Judge Foerschler for a second preliminary hearing on August 3, 2006. The parties had been unable to agree upon a neutral physician and, therefore, the Judge entered the August 3, 2006, Preliminary Decision, which provides:

This claim appears again on August 3, 2006 scheduled for preliminary hearing on the issue of treatment for knee complaints and some temporary total disability for her time off, being declared unable to work. Some additional report has been obtained from her family doctor that the reported twisting of her knee, working in the deli at Moon's IGA "exacerbated" her chronic knee problem. Respondent counters that even if it occurred at work, it was an ordinary mishap that could happen often and anywhere and should not be [the] employer's responsibility.

The parties were never able to agree on a neutral knee specialist to help resolve the dispute. So Dr. Toby at KU Medical Center was designated to do so. However, since Claimant lives in Paola,¹ it was suggested that Dr. Shafer at Olathe be asked to examine and comment on the cause and treatment of her knee problem, for the Division. The attorney for respondent is to see if he will accept this chore and either provide an order for it or advise the writer.

The August 3, 2006, Preliminary Decision provides that claimant be examined by a neutral physician and that opinions be rendered by the physician concerning causation and treatment. On appeal from a preliminary hearing, the Board has jurisdiction to review those issues set forth in K.S.A. 44-534a and the Board's authority is limited to review of allegations that the judge exceeded his or her jurisdiction.² The Judge did not order payment of temporary total disability benefits or medical benefits. Instead, the Preliminary Decision provides for a neutral medical examination to assist his determination of the issues. K.S.A. 44-516 authorizes appointment of an independent medical examiner "[i]n

¹ Claimant lives in Osawatomie. P.H. Trans. (Aug. 3, 2006) at 9.

² See K.S.A. 2005 Supp. 44-551.

case of a dispute as to the injury” On previous occasions, the Board has held that this statute allows an order for an independent medical examiner to assist in the determination of whether an injury has occurred as alleged. The Board holds the same here. The Board finds and concludes the appeal is premature and should be dismissed.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of October, 2006.

BOARD MEMBER

c: James L. Wisler, Attorney for Claimant
Thomas J. Walsh, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge